



2026:DHC:1934



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 26.02.2026
Judgment delivered on: 10.03.2026

C.A.(COMM.IPD-TM) 28/2025, I.A. 15577/2025 & I.A. 22984/2025

NVENIA LLCAppellant

versus

THE CONTROLLER GENERAL OF
PATENTS, DESIGNS AND TRADEMARKSRespondent

Advocates who appeared in this case:

For the Petitioner : Mr. Ranjan Narula, Advocate.

For the Respondent : Ms. Nidhi Raman, CGSC with Mr. Om Ram and
Mr. Arnav Mittal, Advocates.

**CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

J U D G M E N T

TUSHAR RAO GEDELA, J.

1. Present appeal has been filed under Section 91 of the Trade Marks Act, 1999 (hereafter referred to as "*the Act*") seeking setting aside of the Order dated 17.04.2025 (hereinafter referred to as "*impugned order*") passed by the Registrar of Trade Marks whereby the Registrar has declared the appellant's application bearing no.5390410 in Class 07 for the mark "FISCHBEIN" as abandoned despite being intimated of pending opposition proceedings against a conflicting mark cited in the Examination Report and seeking an adjournment on account thereof.



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2. Facts germane to the issue at hand are as under:
 - a. Appellant claims to have adopted and commenced the use of the mark “FISCHBEIN” in the United States of America (USA) in the year 1918 for manufacture of goods in Class-07. Appellant also claims to have commenced use of the mark “FISCHBEIN” in India on or about 31.12.1989 for manufacture of goods in Class-07.
 - b. It is stated that the appellant gained the knowledge of a publication in the Trade Marks Journal dated 30.08.2021 of existence of an identical mark “FISCHBEIN” under application no.4814199 in Class-07 in the name of Mr. Naresh Behl, trading as Citizen Udyog. Alarmed by the alleged dishonest and *malafide* adoption and use of the identical mark, the appellant instituted opposition proceedings on 06.10.2021. The primary ground of opposition being that the impugned mark is identical to the plaintiff’s prior-adopted mark “FISCHBEIN” which enjoys not only prior use, but also extensive use globally.
 - c. In order to assert its right and protect the trademark “FISCHBEIN” adopted by it, the appellant filed an application on 30.03.2022 for registration of the said mark in Class-07 *vide* application no.5390410 for “*Packaging machines; bag forming machines; bag sealing machines; bagging machines; conveyors being machines; filling machines; industrial sealing machines; labeling machines; loading and unloading machines; palletizers, namely machines that sort, transfer, and stack items on pallets; robotic palletizing machines; palletizing machines; sewing machines; stacking machines*” goods. The Examination Report dated 31.05.2022 was furnished by the respondent



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wherein objection on relative grounds of refusal under Section 11 of the Act citing the existence of a prior conflicting trademark namely, the impugned mark filed by Mr. Naresh Behl in application bearing no.4814199.

d. In response thereto, *vide* the reply dated 23.06.2022, the appellant submitted that it is the prior adopter and the user of the mark “FISCHBEIN”, and that the conflicting mark was adopted dishonestly and was identical to the mark of the appellant. The appellant also claims to have informed the Trade Marks Registry that it had initiated opposition proceedings against the said mark of Sh. Naresh Behl.

e. It is claimed that during the hearing on 06.08.2024, the Trade Marks Registry raised an objection as to the user claim not being substantiated, and pursuant thereto, the appellant claims to have filed various documents including written submissions to show the *bona fide* adoption and use of the said mark “FISCHBEIN”. It is claimed by the appellant that though a number of opportunities were provided by the Trade Marks Registry on the written request of the appellant, however, in respect of the last notice of hearing dated 17.02.2025 fixing the hearing for 19.03.2025, despite the appellant seeking extension of time *vide* letter dated 20.02.2025, no such extension was acceded to. It is stated that without providing an opportunity of hearing to the appellant, *vide* order dated 17.04.2025, the Registrar had rejected the application on the ground that it had abandoned the application.

f. Aggrieved by the refusal of the Registrar on the ground of abandonment of the trademark application, the present appeal is



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instituted.

3. Mr. Ranjan Narula, learned counsel appearing for the appellant submitted that the impugned order is a classic case of violation of Principles of Natural Justice, and ought to be set aside on that score alone. He would submit that no doubt the Registrar had afforded number of opportunities to the appellant in the past, however, on the crucial date when the appellant sought an extension for production of relevant material in support of its application seeking registration of the mark “FISCHBEIN”, no such further opportunity was granted, and rather impugned order was passed on a frivolous ground of abandonment. He would submit that once the appellant has filed a number of documents in support of its application seeking registration and even on the last occasion, in answer to the hearing notice dated 17.02.2025, had sought a short accommodation *vide* letter dated 20.02.2025, the Registrar could not have rejected/refused the application on the ground of abandonment at all. He contended that abandonment would constitute wilful or intentional lack of *bona fide* in pursuing the trademark application. He would stoutly contend that in the present case, the records would reveal the petitioner was duly represented by its agent, and was consciously and diligently pursuing the said application.

4. Learned counsel would next invite attention of this Court to the trademark application at page 53 of the paperbook to submit that though the date of application was 30.03.2022, the user detail was declared as 31.12.1989. The proprietor’s name and the address with the details of goods and services in Class-07 was also clearly mentioned. Thus, the appellant



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ought to have been afforded an opportunity to prove the prior use by adequate documents by the Registrar.

5. Learned counsel for the appellant invite attention of this Court to the impugned order dated 17.04.2025 to submit that the said order being bereft of any reasons, *prima facie*, deserves to be quashed and set aside. He contended that other than stating that none had appeared, and that the evidence filed is not satisfactory, there is no reasoning or even a material objection based whereon the impugned order notes the decision of “abandonment”. He would also contend that the Registrar has not even noted that the appellant had filed an adjournment application. He would submit that it is trite that in case of refusal to grant registration of a mark, the Registrar is mandated to give adequate reasons, if not cogent one.

6. Mr. Narula also contended that the rejection on the basis that evidence filed is not satisfactory to claim the user since 1989 cannot withstand the scrutiny of law for the reason that no such objection at all was raised in the Examination Report dated 31.05.2022. In support of the aforesaid contention, learned counsel referred to the Examination Report dated 31.05.2022 whereby the only objection raised therein was on the ground of Section 11(1) of the Act as the mark of the appellant is identical with or similar to an earlier mark in respect of identical or similar description of goods and services. Other than this, no objection, which is now noted in the impugned order, was raised at all. In the absence of such objection in the Examination Report, it could not be perceived by the appellant that any such objection in respect of prior user would form the basis of rejection on the grounds of abandonment by the Registrar in the



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final proceeding. Learned counsel stated that in case, such an objection did come to the notice of the Registrar, unless a notice in that regard raising such objection was furnished to the appellant, the order impugned could not have been passed. He would submit that the law in this regard is fairly well settled.

7. Another ground of attack put forth by learned counsel for the appellant is in respect of numerous invoices filed by the appellant on record. He would submit that on the one hand the Examination Report did not raise any objection which was raised by the Registrar for the first time in the impugned order, while on the other hand the documents (invoices) which were placed on record by the appellant, were not considered at all. He would submit that the authorities cannot non-suit the appellant on a ground not raised in the Examination Report in the first place, and find the appellant lacking in documents proving user, for the first time in the impugned order. Learned counsel forcefully contended that the statutory authorities are mandated to be fair and transparent, which, according to the learned counsel, is lacking in the case.

8. In view of the above, learned counsel would submit that the impugned order having violated the Principles of Natural Justice in more than one context, may be set aside, and the matter may be remitted for *de novo* consideration by the Registrar after affording the appellant an opportunity to place on record additional documents, if so required, in support of its trademarks application.

9. *Per contra*, Ms. Nidhi Raman, learned CGSC appearing for the Registrar vehemently refutes the submissions of the appellant. She would



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contend that in the present case, the appellant's conduct clearly points out to the gross negligence and the lackadaisical attitude and the approach of the appellant in pursuing its trademark application seeking registration of the mark "FISCHBEIN".

10. In support of her contentions she took this Court through the number of hearing notices that were issued to the appellant commencing from the first notice which was issued on 22.05.2024, to which an adjournment application was submitted by the appellant in order to place additional documents on record. The said request was acceded to by the Trade Marks Registry. Similarly, for the second, the third, the fourth and the fifth hearing notices, the appellant instead of diligently collating documents and submitting the same to the Registrar kept seeking adjournment after adjournment on the lame excuses of filing additional documents. She would submit that it is only on the fifth hearing notice that the reason for seeking extension was based on the applicant's opposition filed against the cited mark in the name of Mr. Naresh Behl trading as Citizen Udyog. This application too was indulged with by the Registrar and an adjournment was indeed granted.

11. The last hearing notice was issued on 17.02.2025 for the hearing scheduled on 19.03.2025. Despite having received this notice, neither the appellant appeared nor filed any document in support of the Trademark application. She contended that in such circumstances, the Registrar had no choice and was constrained to pass the impugned order refusing the application on the ground of abandonment.

12. Additionally, in respect of the invoices which the appellant is now



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referring to and pertaining to the year 2015, she would submit that it would be relevant to note that those are not in the name of the appellant. In that regard, she referred the Trademark application of the appellant to submit that while the name of the appellant is “nVenia LLC” the name in the invoices dated 02.06.2015 and others is “Fischbein Packaging (Singapore) Pte Ltd.”, which are two different entities. Clearly, the invoices do not pertain to the appellant and as such the observation of the Registrar that *“evidence filed is not satisfactory to claim user since 1985”* cannot be found fault with.

13. She also drew attention to the reply filed to the Examination Report; the submissions and additional submissions filed by the appellant before the Trade Marks Registry, to submit that though at one place the appellant has stated its original adoption from the year 1918, while at another the appellant claimed adoption since the year 1910. According to her, this inconsistency demonstrates that even the appellant is unsure about the date of adoption of the trademark “FISCHBEIN”.

14. She next referred to the domain name of the Singapore company from the website “WHOIS” registered as “fischbein.com”, which was registered on 30.09.1996. She submits that this document clearly depicts that there is a doubt as to when the name “FISCHBEIN” was adopted even by the Singapore company namely Fischbein Packaging (Singapore) Pte Ltd.

15. Another pertinent argument raised by Ms. Raman was with respect to the non-mentioning of the relationship between the appellant, the Fischbein Packaging (Singapore) Pte Ltd. and Duravant LLC, which is claimed to be



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the original US entity which adopted the mark “FISCHBEIN” in the year 1918. She would contend that in the absence of such crucial collateral documents including any assignment deed in favour of the appellant, in any case the Registrar could not have ascertained with conviction that the appellant is a legally entitled entity conferred with the license to use or is permitted in any other manner to use the mark “FISCHBEIN”.

16. Thus, according to her, the appellant having not only been callous and negligent in the manner as narrated above but also having not placed relevant documents despite having been afforded five adjournments at its request, does not deserve any leniency and the appeal should be dismissed with costs so as to set an example.

17. She would stoutly contend that the bogie of violation of Principles of Natural Justice is false to the knowledge of the appellant and has no substance in it. In fact, according to her, the appellant was afforded more than adequate opportunity to prove and support its trademark application, which it miserably failed to do so.

18. Thus, in the above circumstances, Ms. Raman would contend that the appeal be dismissed being bereft of merits.

19. In rejoinder, Mr. Ranjan Narula, learned counsel for the appellant, submitted that unless the Registrar had afforded an opportunity in the absence of the objection having been raised in the Examination Report, the appellant could not have any opportunity to submit relevant documents before the impugned order was passed. In the said context, learned counsel submitted that relevant documents of assignment flowing to the appellant from the original US entity are enclosed with the present appeal, which



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would clearly depict and demonstrate the appellant as the assignee of the trademark in question.

20. He would submit that if an opportunity is afforded to the appellant to place before the Registrar, these crucial documents alongwith other documents of assignment or merger with the predecessor entities, the appellant would be able to demonstrate and evidence the necessary aspects to overcome the objection now contained in the impugned order, which was hithertobefore never put forth to the appellant. He prays that the order be quashed and the appeal be remitted for reconsideration.

ANALYSIS AND CONCLUSION

21. Before this Court adverts to the arguments of learned counsel for the parties, it would be appropriate to extract the impugned order hereunder:



**INTELLECTUAL
PROPERTY INDIA**
पेटेंट्स / PATENTS / अविष्कारण / DESIGNS
व्यापार चिह्न / TRADE MARKS
भौगोलिक उपदर्शन / GEOGRAPHICAL INDICATIONS



GOVERNMENT OF INDIA
भारत सरकार
GOVERNMENT OF INDIA
TRADE MARKS REGISTRY
Intellectual Property Division,
प्लॉट नं. 32, सेक्टर 14, द्वारका,
नई दिल्ली - 110078
New Delhi - 110078
फोन : 28082915, 28082916, 28082917
Tel : 28082916, 28082916, 28082917

वर्चुअल सुनवाई प्रकोष्ठ / VIRTUAL HEARING CELL
Virtual hearing under rule 115 of Trade Marks Rules 2017

दिनांक/Dated : 17/04/2025

सेवा में/To,

RNA, IP ATTORNEYS
401-402, 4TH FLOOR, SUNCITY SUCCESS TOWER, SEC-65, GOLF
COURSE EXTENSION ROAD, GURGAON-122005 NATIONAL CAPITAL
REGION (HARYANA)

विषय/Subject: आवेदन संख्या/Application No. 5390410 वर्ग/Class 7.
के नाम में/In the name of M/s. nVenia LLC.

सुनवाई की तारीख/Date of Hearing : 19/03/2025

महोदय/महोदय,
Sir/Madam,

उपर्युक्त टीएम आवेदन संख्या 5390410 को निम्नलिखित कारण(णों) से व्यापार चिह्न अधिनियम और नियमों के प्रावधानों के अधीन परित्यक्त माना जाएगा।

The above mentioned TM Application No. 5390410 is to be treated as abandoned under the provisions of Trade Marks Acts and Rules due to the following reason(s) –

-that the compliance informed or direction/s raised at the time of hearing has not been complied with.(NONE APPEARED EVIDENCE FILED IS NOT SATISFACTORY TO CLAIM THE USER SINCE1989 FOR APPLIED MARK AS PRESENT APPLICANT AND APPLICANT AS PER INVOICES ARE DIFFERENT AND NO CLARIFICATION SOUGHT. HENCE ABANDONED.)

(RAJANI SINGH)
वरिष्ठ परीक्षक व्यापार चिह्न, भौगोलिक उपदर्शन एवं प्रतिस्पर्धाधिकार
SENIOR EXAMINER OF TRADE MARKS

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Three things are clear from a perusal of the impugned order, (i) that the Registrar noted “none appeared”; (ii) evidence filed is not satisfactory to claim the user since 1985 as the present applicant and the applicant as per invoices are different, and (iii) no clarification has been sought, hence the application has been taken to be “*abandoned*”.

22. It would be relevant to appreciate as to whether the said objections or findings recorded by the Registrar are found to have been raised in the Examination Report by the Trade Marks Officer. In that context, the Examination Report dated 31.05.2022 is reproduced hereunder:



**INTELLECTUAL
PROPERTY INDIA**

एकता / PATENTS / अविष्कार / DESIGNS

व्यापार चिन्ह / TRADE MARKS

भौगोलिक संकेत / GEOGRAPHICAL INDICATIONS

फोन : 28082915, 28082916, 28082917



सत्यमेव जयते

भारत सरकार

GOVERNMENT OF INDIA

भारत सरकार
व्यापार चिन्ह रजिस्ट्रार
बौद्धिक सम्पदा श्रमण

प्लॉट संख्या 32, सेक्टर 14, द्वारका,

नई दिल्ली - 110078

फोन : 28082915, 28082916, 28082917

GOVERNMENT OF INDIA

TRADE MARKS REGISTRY

Intellectual Property Shavan,

PLOT No - 32, Sector 14, Dwarka,

New Delhi - 110078

Tel : 28082915, 28082916, 28082917

No: TMR/DELHI/EXM/2025/

From : The Registrar of Trade Marks, DELHI

Date: 31/05/2022 13:05:58

To,

RNA, IP ATTORNEYS

401-402, 4TH FLOOR, SUNCITY SUCCESS TOWER, SEC-65, GOLF COURSE EXTENSION ROAD, GURGAON-122005 NATIONAL CAPITAL REGION (HARYANA)

Application No: 5390410 in Class/Classes : 7

In the name of M/s: nVenia LLC

Gentlemen/Madam,

The above mentioned application has been examined under the provisions of Trade Mark Act,1999 and Trade Mark Rules,2002 and the trade mark applied for is open to objection under the following sections :

1. The Trade Mark application is open to objection on relative grounds of refusal under Section 11 of the Act because the same/similar trade mark(s) is/are already on record of the register for the same or similar goods/services. The detail of same/similar trade marks is enclosed herewith

The objection is raised under S 11 (1) of the Trade Marks Act, 1999, as the mark is identical with or similar to earlier marks in respect of identical or similar description of goods or services and because of such identity or similarity there exists a likelihood of confusion on the part of the public.

Hence, the above application is liable to be refused. Accordingly, you are

requested to submit your response/submissions, if any, along-with supporting documents, with in One Month from the date of receipt of this Examination Report or you may apply for a hearing

Please Note that if no reply is received or a request for a hearing is applied for within the above mentioned stipulated time ,the said application shall be treated to have been abandoned for lack of prosecution under Section 132 of the Trade Marks Act,1999 and there after the status of application in the computer database shall reflect the factual position

Note:The reply should be submitted online through Comprehensive eFiling services or through email at parn.tmr@nic.in. With the subject as REPLY TO EXAMINATION REPORT.

Yours faithfully,

INDRESH KUMAR

For Registrar of Trade Marks



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A perusal of the Examination Report brings to fore that the Trade Marks Office raised an objection only under Section 11(1) of the Act, regarding a conflicting mark being identical or similar in respect of identical or similar description of goods and services which may create likelihood of confusion in the minds of the public. The reference to any objection other than the one raised under Section 11(1) of the Act, is conspicuous by its absence. In other words, whether evidence filed in support of the application by the applicant is satisfactory or not to the user claim of the year 1985 or that the invoices filed on record by the appellant are not in the name of the appellant but some other entity and that no clarification in that regard has been issued by the appellant has not been raised in the Examination Report so as to enable the appellant to give clarification at all in the first place. In the absence thereof, it is intriguing as to how the Registrar would expect the appellant to respond without notice of the said objections and still reject the application on the grounds of abandonment based on the non-existing objections.

23. Yet another relevant aspect for consideration of this Court is that the appellant in response to the Examination Report submitted its reply *vide* communication dated 23.07.2022 whereby the objection raised under Section 11(1) of the Act was answered or responded to in the manner to overcome the said objection. This Court is of the opinion that the said response needs to be reproduced herein for clarification.

“Submissions:

We submit that the above objection does not hold good and ought to be waived. Our submissions vis-à-vis the said objection are provided below:

At the outset, we wish to submit that the adoption of the cited mark is in bad faith



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by cited entity especially as the FISCHBEIN mark/name is of foreign origin and has no meaning or association with sewing machines or in any of the Indian languages. In other words, the cited entity has blatantly copied an identical mark. The Applicant has vehemently opposed this cited mark under number DEL- 1126221. In the said opposition, the Applicant has contended bad faith and dishonesty in adoption of an identical mark, FISCHBEIN for identical set of goods while highlighting Applicant's worldwide proprietary rights subsisting in the subject mark.

In this regard, we wish to highlight the bonafide adoption of the trademark FISCHBEIN by the Applicant in the year 1918 and use thereof in 130 jurisdictions worldwide including India. We also aver that the Applicant is also the registered proprietor of the said trademark in class 7 in several jurisdictions (Argentina, Brazil, Canada, EU, Italy, Mexico, Australia, USA, France, etc.) with the earliest registration dating back to the year 1950 in Canada and USA.

We also wish to highlight that the Applicant's trademark FISCHBEIN is a trusted brand for openmouth bag sewing and sealing systems. Today, FISCHBEIN has become the worldwide reference for designing and manufacturing machines to close "open mouth" bags and serves customers worldwide in agriculture, animal feed, seed, pet food, chemical, mineral, milling, and food industries. The details of Applicant's extensive business activities and FISCHBEIN trademark are available on its websites www.nvenia.com, www.duravant.com, www.fischbein.com, www.hamerfischbein.com, and social media websites which are accessible in India. The domain names www.fischbein.com, www.hamer-fischbein.com have been registered since 1996 and 2015.

The aforesaid reiterates the Applicant's bonafide and proprietary rights in the said trademark as envisaged under the provisions of section 18(1) of the Act.

Taking into consideration the aforesaid, we request the learned Registrar to waive the objection raised under Section 11 of the Act and accept the application for publication in the Trademarks Journal.

In the event the foregoing premise does not meet the official requirements, we request the learned Registrar that an opportunity of being heard be accorded in line with the rules of natural justice and equity, to present the case personally before any adverse action is taken in respect of the instant application."



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It is clear from the reply that the appellant had submitted its response, right or wrong, to the objection raised in the Examination Report. At that stage, it could not be expected from the appellant to give any clarification or file any further documents to an objection which was not even raised in the Examination Report. Therefore, the argument on behalf of the respondent in this context is unfathomable and is unmerited.

24. It is the bounden duty of the Trade Marks Office while examining the application to place all objections before the applicant so as to enable the applicant to know and be aware of the objections which are to be addressed. It is those very objections alone that the applicant can be expected to respond to at that stage. In the present case, the impugned order proceeds as if the refusal of the application on the grounds of rejection contained therein were already in the know of the appellant. This is contrary to the facts on record. Thus, in that view of the matter, the contention of the respondent is untenable.

25. Another contention which was raised by Ms. Raman in respect of the conduct of the appellant in seeking innumerable adjournments on frivolous grounds. The same, no doubt reflects poorly on the appellant, however, does not obviate the necessity of the Trade Marks Office or even the Registrar at the time of hearing to put the appellant on notice regarding objections not raised hithertobefore in the Examination Report. Bereft of such a mandate being followed by the authorities including the Registrar, the conduct of the appellant as stated above, though may reflect poorly on the appellant, however, does not remove the mandate of Principles of Natural Justice, which inhere in every quasi judicial proceedings and orders



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passed by such authorities. Thus, the said argument is unpersuasive and untenable.

26. Though, the appellant has filed certain documents whereby it attempts to establish assignment of the trademark “FISCHBEIN” in its favour, the document which confer such right is executed on 25.07.2023 with effect from 01.08.2023, which is after the Examination Report dated 31.05.2022 issued by the Trade Marks Office. To the query raised by this Court in regard to such documents, Mr. Narula submitted that the entities through which the assignment was conferred upon the appellant including the appellant are or were sister companies or entities of the main US company “Duravant LLC”, and such transfer has not happened strictly by way of an Assignment Deed but by way of merger of entities. Thus, he submitted that when two entities under the same holding company are merged, the transfer of rights in such property would flow on merger and not assignment, and the right which accrues therein would relate back to the original date of adoption of the holding company itself. Therefore, the appellant would be entitled in law to seek rights of a prior user to the year 1985.

27. Since the aforesaid issue was not brought to the notice of the Registrar having regard to the lack of objection raised by the Trade Marks Office in the Examination Report dated 31.05.2022, this Court deems it appropriate not to make any observations or record any findings in that regard, lest the same may cause prejudice to either of the parties.

28. Having regard to the overall conspectus, both factual as also on law, this Court is of the considered opinion that the impugned order 17.04.2025



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passed by the Registrar is unsustainable. However, since a lot of factual issues, objections etc., have neither been raised nor dealt with, nor even an opportunity was afforded to the appellant, it would be in the fitness of things to set aside the impugned order and remand the matter back for a *de novo* consideration after issuing a fresh hearing notice to the appellant raising all objections and providing an ample opportunity to the appellant to present its response by way of documents etc. Needless to state an opportunity of hearing also needs to be accorded to the appellant.

29. *Ergo*, in view of the aforesaid analysis, the impugned order dated 17.04.2025 is set aside. The Registrar is directed to issue a fresh hearing notice specifying grounds of objection *qua* the trademark application of the appellant; provide an opportunity to appellant to place on record all relevant documents in support of its application; afford an opportunity of personal hearing or further hearings as may be desired and pass appropriate speaking orders thereon.

30. The aforesaid exercise shall be carried out within a period of four months from the date of the receipt of this order.

31. The appeal is allowed in view of the aforesaid directions and disposed of with all pending applications without any order as to costs.

TUSHAR RAO GEDELA

FEBRUARY 12, 2026/rl